

STATES OF JERSEY

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DRAFT PLANNING AND BUILDING (JERSEY) LAW 2002 (APPOINTED DAY) (No. 2) ACT 200 (P.156/2006): AMENDMENT

Lodged au Greffe on 28th November 2006
by Deputy S. Power of St. Brelade

STATES GREFFE

DRAFT PLANNING AND BUILDING (JERSEY) LAW 2002 (APPOINTED DAY) (No. 2) ACT 200
(P.156/2006): AMENDMENT

PAGE 3, ARTICLE 1 –

In paragraph (1) for “31st March 2007” substitute “1st January 2007”.

DEPUTY S. POWER OF ST. BRELADE

REPORT

During the debate on the Annual Business Plan 2007, I brought an amendment to effectively enable the implementation of Third Party Appeals. As a result of commitments given during the course of that debate I withdrew my amendment.

Unfortunately, whilst being extremely welcome, the Appointed Day Act only implements Third Party Appeals with effect from 31st March 2007. Whilst this is a welcome step forward, it does not fully comply with the commitment given back in September. In addition, I am aware of a number of planning applications in a number of particular parishes which if the commitment had been adhered to would probably have been determined after 1st January 2007, and accordingly the option of a third party appeal would have been available to potential objectors.

It does not seem equitable to partially renege on that commitment.

The only reason given by the Minister for Planning and Environment is that the requisite staff and/or training will not have taken place by 1st January 2007. From the perspective of natural justice this does not seem equitable, and in the light of the commitment in early September it does not appear to be particularly efficient, especially given the period of 3½ months that will have elapsed since that commitment was made. The consequences to the Department of bringing forward the dates are unlikely to be significant. The consequences to individual members of the public that would ordinarily wish to enter into an appeal process but might otherwise be prevented from doing so might be severe, and I hope Members will support this amendment.

Financial and manpower implications

The financial implications of this amendment are neutral, as the Appointed Day Act itself states that "...the Council of Ministers has approved annual expenditure (beginning 2007) of £250,000 to cover the Department's and Court's costs..." Expenditure has therefore already been approved for the entire year of 2007.

The Appointed Day Act also indicates an increased resource of 3 additional staff as having been approved, again on an annual, recurring basis. Therefore there will be no permanent impact from enacting this legislation on the date originally committed to. In the worst case scenario of an appeal being brought at the very beginning of January, it would be logical to assume that some resource might have to be found to temporarily process the appeal. If one assumes the worst-case scenario of appeals commencing at the same level as they are predicted to occur on an annual basis, then 0.75 of a post would be required for the period of 3 months. This is a worst-case scenario, as it would be reasonable to assume that the original posts will have to be in place before 31st March 2007 in order to allow appropriate training, etc. to occur. In addition the whole process of notification of an appeal is quite long, and it would seem unlikely that any appeal, even once notified, could actually properly take place until February at the earliest.

The relevant extracts from the Official Report are as follows:

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 13th SEPTEMBER 2006

The Greffier of the States:

In paragraph (c), after the words “withdrawn from the Consolidated Fund in 2007” insert the words “except that the net revenue expenditure of the Minister for Planning and Environment for 2007 be increased by £250,000 to fund the introduction of third party planning appeals, and the net revenue expenditure of the Minister for Home Affairs be decreased by £250,000 by reducing the proposed allocation relating to discrimination legislation.”

The Deputy Bailiff:

Chief Minister, my understanding is this is one that you are not accepting, is that correct?

Senator F.H. Walker:

That is correct, Sir.

The Deputy Bailiff:

Yes, very well. Deputy Power.

1.11 Deputy S. Power:

Before I begin, can I pay a tribute to Deputy Celia Scott Warren, who has personally, I suppose, dragged this sometimes unwilling and recalcitrant Assembly over the past 5 years to accept the principle of third party appeals. This will be a very short speech. A third party appeal is a proposal to allow an appeal process to those people and parties affected by the decision of a planning approval within 50 metres or 150 feet of a third party property. I know that Senator Cohen has his own views on those dimensions. This is not an amendment of robbing Peter to pay Paul, and this is certainly not a case of robbing Wendy to pay Freddy. **[Laughter]** The reason I have brought this amendment is because there is no specific reference to fund third party appeals or dangerous structures in 2007 and 2008. I have asked the Treasury Minister and his Assistant as to where there is a reference or a provision for funding for third party appeals, and the only reference is on page 29 of the business plan – not the annex – page 29, in the second paragraph in the business plan. Now, I have brought forward this amendment, and I want to make it clear I have brought forward this amendment not because a sense of malice directed towards Senator Kinnard and the Home Affairs Ministry. It is not because I want to cause Home Affairs any difficulties, and it is not because I am trying to have some sort of a pop at Home Affairs. It is none of those things. The reason I am bringing this amendment forward is because this Assembly has approved the Planning and Building Law 2002 without any funding provisions for third party appeals or dangerous structures. I now turn to the wording of my amendment. Members will note that I am not attempting to affect the revenue funds of the Home Affairs Department; I am, I suppose, in my own way prioritising or reallocating funds for the Planning Ministry for third party appeals, so that it can be kick started a.s.a.p. (as soon as possible). Deputy Scott Warren started on this long road I think nearly 6 years ago, and it must be frustrating to her to see that the new Planning and Building Law 2002 has been enacted without any funding. I draw Members’ attention to the annex on page 5 of my amendment and if one looks at not so much the box of figures, which is Home Affairs’ own figures, but the reference at the top. While in 2007 Home Affairs are proposing to spend £236,287 of their discrimination fund out of an allocation of £500,000, they are saying that they are not going to spend over £250,000, and they are saying that that could be used to fund the shortfall in the prison budget until savings could be realised. So it is because of this that I am proposing that that £250,000-odd which is not going to be spent in 2007 could be allocated in the short term to the Planning Ministry to fund third party appeals. It is in the context of the fact that Home Affairs have a revenue budget of £39.6 million, and they have a capital budget of £15 million, compared to Planning’s £5.6 million – I stand to be corrected. The availability of this £250,000 to Planning would kick-start the process of implementation of third party appeals, and I think that is extremely important. I think that what will happen afterwards will be that it will be funded on an annual basis by Treasury, so I am not going to speak much longer,

except to ask this Assembly to support this amendment. Thank you.

The Deputy Bailiff:

Is the amendment seconded? [**Seconded**] Senator Cohen.

Deputy P.N. Troy:

Sir, before Senator Cohen responds, can I just say that I am involved in the building industry. You invited Deputy Power to speak, and I did not have the chance before then to declare an interest, so I think I would prefer to not take part in this section.

The Deputy Bailiff:

Thank you, Deputy. Yes, Senator.

1.11.1 Senator F.E. Cohen:

The Council of Ministers is committed to third party appeals. We have agreed that the Council of Ministers will find the money to fund this. Thus, the House has an assurance that the funds will be found and that work can commence immediately on implementing third party appeals. So third party appeals will happen, and the Council of Ministers will find the money to implement third party appeals. Based on that assurance, I would request that Deputy Power considers withdrawing his amendment.

1.11.2 Senator T.A. Le Sueur:

I was simply going to reiterate those comments, Sir. Although the wording of the business plan says the Council of Ministers has the authority to transfer funds and that would enable initiatives to happen, that process is not strongly enough worded in there. There is a commitment. We will enable it to happen, and it will happen. So the Council of Ministers will fund that, and I can give the undertaking as Treasury Minister on behalf of the Council of Ministers and in support of Senator Cohen to say that that funding will be in place, and on that basis, Sir, I hope Deputy Power now has the assurance that he was seeking.

The Deputy Bailiff:

I suppose just one query springs to mind. In place for when?

Senator T.A. Le Sueur:

Next year.

The Deputy Bailiff:

For next year.

Deputy J.A. Hilton of St. Helier:

Just a point of clarification, Sir. I thought I understood Senator Cohen to say that third party appeals would start immediately, and now is Senator Le Sueur saying that third party appeals will be funded from next year, and if that is the case, when exactly next year?

Senator T.A. Le Sueur:

We are just debating the 2007 business plan; we are talking about the estimates for 2007, and it is 2007 figures. If the Planning Minister is satisfied that within his budget for 2006 he has funding to start now, that is fair enough. All I am saying is the Council of Ministers will undertake from 1st January 2007, if that is the required date, from 1st January 2007 to fund third party appeals thereafter.

Deputy C.J. Scott Warren:

Sir, could I ask for clarification? It was going to be a part of my speech, but can I just ask for clarification? Because there are no funds at present allocated in the business plan, similarly ... the Minister for Home Affairs will know that I am a great supporter of the prison and the prison improvement plan. There is similarly this £1 million that is half or more promised to Home Affairs. There is no actual allocation of resources in this business plan. What I have just heard is like music to the ears, but where is this money coming from, please?

The Deputy Bailiff:

Senator, do you wish to clarify that from your speech?

Senator T.A. Le Sueur:

I do not really want to have an ongoing discussion, Sir. I have given the undertaking. This is one of the problems that the Council of Ministers is going to have to face. We have made a commitment. We will honour that commitment, and it is up to us as Ministers to decide between us how that £250,000 is met and from which source. But some Ministers or maybe a combination of Ministers are going to have to suffer some reduction in order to fund that £250,000. The budget total remains sacrosanct, so it is up to the Ministers to decide who is the best victim, if you like, to meet that funding.

The Deputy Bailiff:

Well, Deputy, in the light of that assurance, do you wish to proceed with your amendment?

1.11.3 Deputy S. Power:

Sir, my reaction is that if the Treasury Minister, the Planning Minister and the Home Affairs Minister are assuring the House now that they can fund third party appeals from the beginning of 2007, I will withdraw my amendment.

The Deputy Bailiff:

Well, I think it is not the Home Affairs Minister, it is simply the Planning Minister and the Treasury Minister.

Deputy S. Power:

But the Planning Minister and the Home Affairs Minister are agreeing with the Treasury Minister. Then I will withdraw my amendment.

Deputy J.A.N. Le Fondré:

Sir, may I ask for a further point of clarification? Does this mean that before Christmas, then, we have to have another Appointed Day Act to enact the outstanding legislation?

The Deputy Bailiff:

If it is not in force yet, then an Appointed Day Act will be necessary.

Senator F.E. Cohen:

Yes, there is work to be done. There will be an Appointed Day Act, and there will be details required of how third party appeals are going to work. There is work to be done; there is work going on at the moment.

Deputy S. Power:

Sir, can I have one final clarification from the Treasury Minister? Does that also include that there will be funding for the Royal Court?

Senator T.A. Le Sueur:

Yes, Sir. The £250,000 included a sum for court costs, and that is part of the whole undertaking.

The Deputy Bailiff:

Very well. So that amendment is withdrawn on the basis of the assurances given.